

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

**JOSE ELIAS GARCIA and
VINCENTE PADILLA-NAVARRO,**

Defendants.

CASE NO. 8:05CR94

MEMORANDUM AND ORDER

This matter is before the Court on the Report and Recommendation (Filing No. 98) issued by Magistrate Judge F.A. Gossett recommending denial of the Motion to Suppress Wiretap Evidence (Filing No. 65) filed by the Defendant, Jose Elias Garcia, and joined in by the Defendant, Vincente Padilla-Navarro. No objections have been filed to the Report and Recommendation as allowed by 28 U.S.C. § 636(b)(1)(C) and NECrimR 57.3(a).

The Defendant seeks an order suppressing evidence obtained as the result of a wiretap authorization signed by the Honorable Joseph Bataillon on February 17, 2005, for three cellular telephone numbers. After an evidentiary hearing, Judge Gossett very thoroughly set out all of the relevant facts and concluded: the wiretap application was proper and fulfilled the requirements of 18 U.S.C. § 2518(1)(a)-(f); probable cause existed for allowing the electronic interception; even absent probable cause, the good faith exception of the standard set out in *United States v. Leon*, 468 U.S. 897 (1984) applies as officers' reliance on the wiretap authorization was objectively reasonable; and because the evidence shows other investigative techniques that were and could have been used prior to seeking the wiretap authorization, the required showing of "necessity" was met.

Notwithstanding the absence of objections, pursuant to 28 U.S.C. § 636(b)(1)(C) and NECrimR 57.3, the Court has conducted a de novo review of the record. The Court has read the parties' briefs (Filing Nos. 95, 97) and the transcript (Filing No. 89). The Court has also viewed the evidence. (Filing No. 85) Because Judge Gossett fully, carefully, and correctly applied the law to the facts, the Court adopts the Report and Recommendation in its entirety.

IT IS ORDERED:

1. The Magistrate Judge's Report and Recommendation (Filing No. 98) is adopted in its entirety; and
2. The Motion to Suppress Wiretap Evidence (Filing No. 65) filed by the Defendant, Jose Elias Garcia, and joined in by the Defendant, Vincente Padilla-Navarro is denied.

DATED this 5th day of January, 2006.

BY THE COURT:

S/Laurie Smith Camp
United States District Judge